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OFFICE OF PETITIONS

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO IL 60610

In re Application of :  
Beck, et al. :  
Application No. 10/797,581 : LETTER REGARDING  
Filed: March 10, 2004 : PATENT TERM ADJUSTMENT  
Docket No. 3591-1377 :

This is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed October 30, 2009. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **34 days**. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On July 30, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 62 days. On October 30, 2009, applicants submitted the instant comment. Applicants disclose that they believe that the patent term adjustment indicated in the Determination of Patent Term Adjustment is incorrect and should be recalculated. Applicants do not state a basis for their disclosure that the Patent Term Adjustment on the Notice of Allowance disagrees with their calculation.

Nonetheless, a review of the record reveals that the initial determination of patent term adjustment of 62 days is incorrect.

A review of the PTA calculations for the application reveals that after applicants filed a reply on May 7, 2009 to a non-final Office action, that applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on June 4, 2009. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed June 4, 2009, reveals that applicants did not include a statement under 37 CFR 1.704(d).<sup>1</sup> Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 28 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, May 8, 2009, and ending on the date that the IDS was filed, June 4, 2009. Accordingly, a period of reduction of 28 days will be entered.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **34 days** (155 days of Office delay - 121 days of applicant delay).

As this letter was submitted to advise the Office of an error in applicants' favor, no fee under 37 CFR 1.18(e) is required. The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

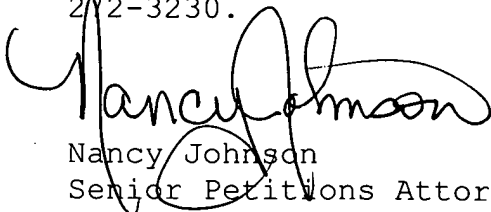
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<sup>1</sup> Pursuant to 37 CFR § 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" being more prominent and the last name "Johnson" following in a similar style.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Day : Friday  
Date: 2/26/2010

# **PALM INTRANET**

Time: 12:16:45

PTA Calculations for Application: 10/797581			
Application Filing Date:	03/10/2004	PTO Delay (PTO):	155
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	93
Post-Issue Petitions:	0	Total PTA (days):	34
PTO Delay Adjustment:	-28		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
92	02/26/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		28	
85	09/04/2009	MAIL NOTICE OF ALLOWANCE			
84	06/04/2009	REFERENCE CAPTURE ON IDS			
83	06/04/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
78	07/29/2009	ISSUE REVISION COMPLETED			
77	07/29/2009	DOCUMENT VERIFICATION			
76	07/29/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
75	06/22/2009	NOTICE OF ALLOWABILITY			
73	06/04/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
67	05/07/2009	NEW OR ADDITIONAL DRAWING FILED			
66	06/08/2009	DATE FORWARDED TO EXAMINER			
65	05/07/2009	RESPONSE AFTER NON-FINAL ACTION		24	61
64	05/07/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
63	06/04/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
61	01/13/2009	MAIL NON-FINAL REJECTION			
60	12/22/2008	NON-FINAL REJECTION			
59	10/23/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
58	10/23/2008	REFERENCE CAPTURE ON IDS			
57	10/23/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		24	53
55	10/23/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

54	10/20/2008	DATE FORWARDED TO EXAMINER			
53	09/29/2008	RESPONSE AFTER NON-FINAL ACTION		2	52
52	06/27/2008	MAIL NON-FINAL REJECTION			
51	06/23/2008	NON-FINAL REJECTION			
50	02/28/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
49	02/28/2008	REFERENCE CAPTURE ON IDS			
48	02/28/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	46
47	04/07/2008	DATE FORWARDED TO EXAMINER			
46	02/28/2008	RESPONSE AFTER NON-FINAL ACTION			
45	02/28/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
44	11/28/2007	MAIL NON-FINAL REJECTION			
43	11/26/2007	NON-FINAL REJECTION			
42	09/13/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
41	09/20/2007	DATE FORWARDED TO EXAMINER			
40	09/13/2007	RESPONSE AFTER NON-FINAL ACTION		9	35
39	09/13/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	09/13/2007	REFERENCE CAPTURE ON IDS			
37	09/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	09/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	06/04/2007	MAIL NON-FINAL REJECTION	44		29
34	05/29/2007	NON-FINAL REJECTION			
33	12/21/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32.7	12/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	29
32	12/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	12/21/2006	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
30	03/26/2007	DATE FORWARDED TO EXAMINER			
29	12/21/2006	RESPONSE AFTER NON-FINAL ACTION		27	27
28	12/21/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			

27	08/24/2006	MAIL NON-FINAL REJECTION			
26	08/21/2006	NON-FINAL REJECTION			
25	06/08/2006	DATE FORWARDED TO EXAMINER			
24	06/05/2006	RESPONSE AFTER NON-FINAL ACTION		4	23
23	03/01/2006	MAIL NON-FINAL REJECTION			
22	02/21/2006	NON-FINAL REJECTION			
21	12/08/2005	DATE FORWARDED TO EXAMINER			
20	12/02/2005	RESPONSE AFTER NON-FINAL ACTION		3	19
19	08/29/2005	MAIL NON-FINAL REJECTION	111		-1
18	08/22/2005	NON-FINAL REJECTION			
17	08/09/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
16	05/13/2005	CASE DOCKETED TO EXAMINER IN GAU			
15	10/14/2004	CASE DOCKETED TO EXAMINER IN GAU			
14	10/05/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	08/09/2004	REFERENCE CAPTURE ON IDS			
12.7	08/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	08/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	09/15/2004	APPLICATION RETURN FROM OIPE			
10	09/15/2004	APPLICATION RETURN TO OIPE			
9	09/15/2004	APPLICATION DISPATCHED FROM OIPE			
8	09/15/2004	APPLICATION IS NOW COMPLETE			
7	07/30/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
6	07/30/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	05/27/2004	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
4	04/07/2004	CLEARED BY OIPE CSR			
3	04/07/2004	CASE CLASSIFIED BY OIPE			
2	03/29/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/10/2004	INITIAL EXAM TEAM NN			

Search Another: Application#

Search

#### EXPLANATION OF PTA CALCULATION